

Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

STATE CORPORATION COMMISSION.

IN RE APPLICATION FOR A CHARTER BY THE RICHMOND TITLE AND ABSTRACT COMPANY, INCORPORATED.

1. Corporations—Request for Charter—Duty of State Corporation Commission.—Upon an application for a charter it is the duty of the Corporation Commission, before granting the same, to ascertain whether the applicants have entitled themselves to a charter by complying with the requirements of the law; whether the business proposed to be established is lawful and its object legitimate, if other than a public service corporation; and whether the certificate of incorporation contains provisions regulating the business, or granting powers to the corporation or its directors, inconsistent with the act concerning incorporation.

2. Attorney and Client—Admission to Practice.—Only male citizens may qualify to practice law, and the right can not be exercised by a corporation.

3. Corporations—Purpose of Organization—Practice of Law.—An application for a charter for a corporation which specifies its purpose to be, to make abstracts of titles; to aid in clearing and perfecting titles; to act as agent in the execution of any business, obligation, office or duty; to act as trustee to give advice and furnish attorneys in land transactions; and to furnish licensed attorneys to others in a general practice of law, is a corporation proposed to be established for the practice of law.

4. Corporations—Grant of Charter—To Practice Profession.—The Corporation Commission will not issue a charter authorizing a corporation to practice either law, medicine or dentistry.

OPINION BY CHRISTOPHER B. GARNETT, CHAIRMAN.

A certificate of incorporation has been presented to the Commission requesting the issuance of a charter under the name of the Richmond Title and Abstract Company, Incorporated, with its principal office to be located in the City of Richmond.

Among the purposes for which the corporation is to be formed are the following:

1. "To make abstracts of titles to land in Virginia and to furnish such abstracts to others for such reasonable fees as may be fixed or charged therefor."

2. "To aid in clearing and perfecting titles to all such lands; * * * upon such terms and conditions, as may be fixed or charged or agreed upon."

3. "To act as agent in the execution of any business, obligations, office or duty; to supervise, arrange and negotiate the is-

sue of bonds, stocks, mortgages, leases or obligations, of corporations, firms or individuals and to register and certify the proper issue of the same; and generally to do all things incidental and necessary and useful to the proper conduct of its business."

4. "To act as Trustee in deeds of trust on real estate."

5. "To give advice and to furnish licensed attorneys to others for the registration, transfer and assurance of titles to land in Virginia in accordance with law."

6. "To furnish licensed attorneys to others for the conduct of legal services of such nature as may be included in a general practice of law."

The question which is raised by this application is whether, under the Constitution and statutes of Virginia, the State Corporation Commission has the power to issue a charter to three or more individuals who may desire to form a corporation for the purpose of engaging in the practice of law, for not only does the certificate of incorporation specifically include within the purposes of this contemplated corporation that it shall have the power to "give advice and to furnish licensed attorneys to others for the registration, transfer and assurance of titles to land;" and, further, "to furnish licensed attorneys to others for the conduct of legal services of such nature as may be included in a general practice of law;" but it also includes other purposes enumerated above, which as we shall see in the sequel, have been construed to be included under the expression "the practice of the law."

The provisions of the Constitution and statutes of Virginia relating to the issuance of charters to persons for incorporation are very liberal and are intended to encourage the procurement of charters and the formation of corporations in this State. See Monk *v.* Barnett, 113 Va. 635, 649, where Judge Cardwell, in rendering the opinion of the court says:

"This new policy now in vogue in this State has not only in view the granting of a charter to any three or more individuals to conduct, as a corporation, any business that might be conducted by an individual or individuals within the State, but invites the application for such charters, * * *"

The provisions of our Constitution and statutes relating to the issuance of charters to business corporations may be found in Virginia Constitution 1902, secs. 154 and 156 (a) and in Virginia Code 1904, sec. 1105 (a).

Sec. 154 of the Constitution provides in effect that the creation of corporations shall be provided for by general laws, and that no charter shall be granted by special act, nor shall author-

ity in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, and to issue, or refuse, the same accordingly. And, further, that the General Assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers or privileges.

Sec. 156 (a) of the Constitution provides that, subject to the provisions of the Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and through which shall be carried out all the provisions of the Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision and control of corporations chartered by, or doing business in this State.

Sec. 1105 (a), Va. Code 1904, providing how a corporation may be formed, sets forth that by executing and filing the required certificate any number of persons, not less than three, may, under the provisions of the act, associate to establish a corporation for the transaction of "any lawful business," or to promote or conduct any "legitimate business or purpose," except a railroad company, or other public service company; and said section, in clause 2, provides that the certificate of incorporation shall set forth, among other things, the purposes for which it is formed, and that such certificate may also contain any provision which the incorporators may choose to insert for the regulation of the business, creating, defining, limiting or regulating the powers of the corporation or of the directors and for the conduct of the affairs of the corporation, provided such provision be not inconsistent with the act concerning corporations.

Under the foregoing sections of the Constitution and statutes of this State, the inquiries before this Commission, in passing upon applications for charters, are:

1. To ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter;

2. To inquire whether the applicants propose to establish a lawful business and to promote or conduct a legitimate object or purpose other than that of a public service corporation;

3. To inquire whether the certificate of incorporation contains provisions (a) regulating the business, or (b) creating, defining, limiting, or regulating the powers of the corporation,

or of the directors or stockholders, which are inconsistent with the act concerning corporations.

If in any given case the applicants for a charter have complied with the requirements of the law, then it seems clear that they are entitled to a charter; but in ascertaining whether the applicants have complied with the law, it is necessary to inquire into the business proposed to be established, and the object or purpose to be promoted or conducted, and if the business proposed to be established is not a "lawful business" within the meaning of the statute, or if the object or purpose to be promoted or conducted is not "legitimate" within the meaning of the statute, then it is clear that the Commission should refuse to grant the charter. So, also, it is necessary for the Commission to examine the provisions in the certificate of incorporation which are designed to regulate the business, and those provisions which are designed to create, define, limit or regulate the powers of the corporation, or of the directors or stockholders, and if such provisions are designed to enable the corporation to establish a business which is not "lawful" within the meaning of the statute, or to promote and conduct an object or purpose which is not "legitimate," as defined by the statute, then it is clear that the Commission should refuse to grant the charter.

In Hanger *v.* Commonwealth, 107 Va. 872, the Supreme Court held that where the charter of a social club was fraudulently obtained for the purpose of procuring the privilege of selling tobacco, cigars, cigarettes, soda water and other soft drinks on Sunday, a judgment upon a writ of *quo warranto*, annulling the charter obtained from the State Corporation Commission, should be sustained. In deciding this question, Cardwell, J., delivering the opinion of the court, says, page 875:

"The law authorizing the chartering of social clubs is found in ch. 4 of the 'Act concerning corporations,' Acts 1902-3-4, p. 461; and while the act does not define the functions that may be exercised by such corporations, and there is no general law describing the character of the business that may be done, or regulating the conduct of corporations of this nature, it was clearly never intended to confer upon the organization authority to conduct a business which, if conducted by an individual, would be in violation of law. A charter of incorporation may be granted to an association of persons to conduct any business that an individual may lawfully conduct under the law of the state (Ward L. Co. *v.* Henderson-White Mfg. Co., ante p. 626, 59 S. E. 476, recently decided by this court), but never to authorize the conduct of a business which an individual may not lawfully conduct under existing laws."

It is clear therefore, that, while the provisions of our Consti-

tution and of our statutes relating to the issuance of charters to business corporations are liberal and intended to encourage the issuance of such charters, the Commission is not without limitation in considering the application for such a charter. As already indicated, it must in every case inquire into the purpose of the incorporation and the business proposed to be established, and it must also scrutinize the powers of the corporation, and of the directors and stockholders. If the business be not lawful, or the purpose be not legitimate, or the provisions, limiting or defining the powers of the corporation, or of its directors or stockholders, be of such a character as to render its business unlawful, or its purpose illegitimate, then the Commission should refuse to grant the charter.

Two specific questions are before us for decision:

First, Whether the purposes enumerated in the certificate of incorporation and set out above constitute "the practice of law," and, second, if it be established that the enumerated purposes contain acts which do constitute "the practice of law," whether the Commission should issue the charter.

On the general subject of what constitutes the "practice of law," it is sufficient to refer to the excellent notes found in 18 Am. & Eng. Ann. Cas. 658 and 24 L. R. A. (N. S.) 750, appended to the case of In re Duncan, 83 S. C. 186, reported in both of the above volumes. In that case it was held that any advice given to clients or action taken for them in matters connected with the law is practicing law, and that, therefore, it is practicing law to give advice as to the rights of a person committed to the chain gang for failure to pay a fine and to undertake to procure the acceptance of the fine and the release of such person. The holding of that case that the practice of law is not limited to the conduct of a case in court is supported by State *v.* Richardson, 125 La. 644, 51 So. 673; Abercrombie *v.* Jordan, 8 Q. B. D. (Eng.) 187; In re Simmons, 15 Q. B. D. (Eng.) 348; Montreal Bar *v.* Sprague's Mercantile Agency, 25 Quebec Super. Ct. 383, cited in note, 18 Am. & Eng. Ann. Cas. 659.

From these cases and others that might be cited, it is perfectly clear that the purposes for which the corporation is proposed to be established include many that constitute the practice of law.

The next question for us to consider is whether under the provisions of the Constitution and statutes referred to above, the Commission has authority to issue a charter authorizing a corporation to practice law.

Before a person may practice law in this state, he must, unless he be already a licensed practitioner before the Supreme

Court of another State, stand an examination before the State Board of Law Examiners as to his legal learning and general qualifications; and this examination is confined to *male citizens*. Sec. 3191, as amended by Acts 1914, ch. 69, p. 96.

Under the rules and regulations issued by the Supreme Court of Appeals, every person desiring to stand the examination must first obtain from the circuit court of the county, or the corporation court of the city, wherein he resides, a certificate that he is a person of honest demeanor; is over twenty-one years of age, and that he has resided in the State for six preceding months. This certificate can only be obtained by an application to the court, accompanied by the written recommendation of two members of the bar of his judicial circuit, who practice in the Supreme Court of Appeals of Virginia, that the applicant is a person of good moral character and a proper person to be licensed to practice law. The examination which the applicant is required to stand covers the whole field of the law and is of a very rigid nature. It is needless to say that a corporation cannot fulfill the conditions prescribed by our statutes as a prerequisite to the practice of law, especially in view of the fact that the examination is confined to male citizens. Surely if the members of the female sex are by implication from the statute prohibited from practicing law in this State, then corporations, which have no sex, cannot claim the privilege.

The specific question now being considered was before the Court of Appeals of New York in the case of In re Co-operative Law Co., 198 N. Y. 479; 92 N. E. 15; 19 Ann. Cas. 879; 32 L. R. A. (N. S.) 55. In that case the question was squarely before the court to decide whether, under the New York statute authorizing the formation of stock corporations for any lawful business, the term "lawful business" included the business of practicing law, and it was specifically held that the statute did not apply to a corporation the design of which was to practice law. In discussing this question, Vann, J., speaking for the whole court, in a most convincing opinion, made use of the following language, which we quote at length, because it covers the case so fully that it leaves nothing else to be said:

"We agree with the learned counsel for the appellant that the vital question is whether prior to the Act of 1909, a corporation could be lawfully organized to practice law. He claims that authority may be found in that part of the Business Corporations Law which provides that 'three or more persons may become a stock corporation for any lawful business.' Business Corporations Law, sec. 2. This means a business lawful to all who wish to engage in it. The practice of law

is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study general and professional, and a thorough examination by a state board appointed for the purpose. The right to practice law is in the nature of a franchise from the state conferred only for merit. It can not be assigned or inherited, but must be earned by hard study and good conduct. It is attested by a certificate from the Supreme Court and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute, and the rules of the courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in. As it cannot practice law directly, it cannot indirectly by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate. *Quando aliquid prohibiteur ex directo, prohibiteur et per obliquim.* Co. Litt. 223.

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant. The corporation would control the litigation, the money earned would belong to the corporation, and the attorney would be responsible to the corporation only. His master would not be the client, but the corporation, conducted, it may be, wholly by laymen organized simply to make money and not to aid in the administration of justice, which is the highest function of an attorney and counselor at law. The corporation might not have a lawyer among its stockholders, directors, or officers. Its members might be without character, learning or standing. There would be no remedy by attachment or disbarment to protect the public from imposition or fraud, no stimulus to good conduct from the traditions of an ancient and honorable profession, and no guide except the sordid purpose to earn money for stockholders. The bar, which is an institution of the highest usefulness and standing, would be degraded if even

its humblest member became subject to the orders of a money-making corporation engaged not in conducting litigation for itself, but in the business of conducting litigation for others. The degradation of the bar is an injury to the state.

"A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it, any more than it can practice medicine or dentistry by hiring doctors or dentists to act for it. People *v.* John H. Woodbury Dermatological Institute, 192 N. Y. 454, 85 N. E. 697; Hannon *v.* Siegel-Cooper Co., 167 N. Y. 244, 246, 60 N. E. 597, 52 L, R. A. 429. The legislature in authorizing the formation of corporations to carry on 'any lawful business' did not intend to include the work of the learned professions. Such an innovation with the evil results that might follow would require the use of specific language clearly indicating the intention. Recent legislation simply emphasizes and protects the established policy of the state and although *ex post facto* tends to show no such object was in contemplation when the general term 'lawful business' was used in the statute to authorize the formation of business corporations. L, 1909, cc. 483, 484. Business in its ordinary sense was aimed at, not the business or calling of members of the great profession, which for time out of mind have been given exclusive rights and subjected to peculiar responsibilities. All statutes relating to the same subject-matter must be read together and construed as parts of an entire system. When the provisions of the Code of Civil Procedure regulating the practice of law and the conduct of lawyers are read in connection with the clause of the Business Corporations Law quoted above, it is obvious that they do not relate to the same subject-matter and that in enacting the latter the legislature was dealing with something utterly foreign to the former. Code Civ. Pro. secs. 56-81; Judiciary Law, L. 1909, c. 35. The special provisions relating to lawyers were not modified or affected by the general provision authorizing the formation of business corporations."

The gist of the decision is that under a statute authorizing the formation of business corporations "for any lawful business" a corporation can not be organized to engage in the practice of law, and the grounds upon which the decision is based are:

1. The use of the term "lawful business" means a business lawful to all who wish to engage in it, and the term is used to refer to business in its ordinary sense, and not the business or calling of the members of a great profession.

2. Practice of law is not a business open to all, but a personal right, limited to a few persons, of good moral character, with

special qualifications, ascertained and certified, after a long course of study, both general and professional, and a thorough examination by a State board, and therefore the right to practice law is in the nature of a franchise from the State, conferred only for merit.

3. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, and liable to punishment for contempt.

4. The relation of an attorney and client is that of master and servant, in a limited and dignified sense, involving the highest trust and confidence, and can not be delegated.

Some incidental points, contained in the opinion, may be noted.

It is also held that as a corporation can not practice law directly, it cannot do so indirectly by employing competent lawyers to practice for it, as that would be an innovation which the law would not tolerate; and therefore a corporation cannot hire lawyers to carry on the business of practicing law for it.

The decision is broad enough to cover not only the practice of law, but also the practice of medicine and the practice of dentistry. Indeed, the decision is made to rest upon one case involving the right of a corporation to practice medicine, and another the right of a corporation to practice dentistry.

There is no case in Virginia relating directly to the point at issue, but in Crall *v.* Commonwealth, 103 Va. 855, it was held that a corporation could not carry on the business of peddling where the statute required that all persons engaged in such business should procure a license, and that while a license to peddle could not issue to a corporation, a corporation might have one of its agents licensed and carry on its business through him. See to the same effect Standard Oil Co. *v.* Commonwealth, 107 Ky. 606, 55 S. W. 8. These cases, however, do not involve the application of a corporation for a charter to carry on a licensed business. The case of In re Co-operative Law Co., *supra,* was followed by In re Bensell, 124 N. Y. Supp. 726, where it was held that since a corporation was not an attorney at law and could not practice through lawyers employed by it, it could not enforce a lien for legal services.

In re Asso. Lawyers Co., 119 N. Y. Supp. 77, there was a denial of application for the approval of the court under the statutes involved In re Co-operative Law Co. *supra,* filed by a corporation organized to do a general law and collection business, the court placing the denial upon the ground that this corporation was not one whose existence, organization or incorporation it was authorized to approve. The court in discussing this case, made use of the following language:

"While it has never been legal for a corporation to practice law, a system has grown up by which corporations undertake to procure attorneys for the transaction of law business for its clients, and while the legality of such corporate action has been doubted, the impropriety of allowing corporations to enter into such a business has been universally recognized, and by this legislation it has been prohibited," the court referring to a certain legislation recently passed by the Legislature of New York.

Any person who is interested in the subject may learn something of the evils resulting from the practice of law by corporations by referring to articles in 79 Central Law Journal, 111, and in 80 Central Law Journal, 250.

Our conclusion therefore, is that we should not only refuse to issue the charter applied for in this case, but that we shall not in the future issue any charter authorizing a corporation to practice either law, medicine, or dentistry.